



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 11<sup>TH</sup> DAY OF DECEMBER, 2025  
PRESENT**

**THE HON'BLE MR. JUSTICE R.DEVDAS  
AND  
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI**

**R.F.A. NO.100181 OF 2019 (MON)  
C/W. R.F.A. NO.100179 OF 2019 (MON)  
R.F.A. NO.100180 OF 2019 (MON)**

**IN R.F.A. NO.100181/2019**

**BETWEEN:**

NIRANI SUGARS LTD.,  
A COMPANY REGISTERED UNDER  
THE COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE  
AT: 4/2, 1<sup>ST</sup> FLOOR, LEFT WING,  
SIDDHA ENCLAVE, NEHRU NAGAR,  
BANGALORE, HAVING ITS  
SUGAR MANUFACTURING UNIT  
AND FACTORY SITE AT SY.NO.166,  
KULLALI CROSS, TQ: MUDHOL,  
DIST: BAGALKOT, DULY REPRESENTED  
BY MR. MAHESH P. LALAGE,  
THE DEPUTY GENERAL MANAGER,  
(A & O), AGE: 42 YEARS,  
OCC: DEPUTY GENERAL MANAGER,  
R/O. MUDHOL, TQ: MUDHOL,  
DIST: BAGALKOT-587313.

...APPELLANT

(BY SRI SANGRAM S. KULKARNI, ADVOCATE)



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**AND:**

SPACO CORPORATION,  
B-7/22-23, MIDC MIRAJ,  
DIST: SANGLI,  
MAHARASHTRA STATE,  
A REGISTERED PARTNERSHIP FIRM,  
REPRESENTED BY ITS PARTNER,  
SHRI. N. N. GURAV,  
AGE: 66 YEARS, OCC: TRADE,  
R/O. B-7/22-23, MIDC, MIRAJ,  
DIST. SANGLI,  
MAHARASHTRA STATE-416410.

...RESPONDENT

(BY SRI NANDKUMAR ANNA VHATKAR, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 AND 2 OF CPC., PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 11/01/2019 PASSED IN O.S.NO.13/2013 PASSED BY THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MUDHOL, BY ALLOWING THE PRESENT APPEAL IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

**IN R.F.A. NO.100179 OF 2019**  
**BETWEEN:**

1. NIRANI SUGARS LIMITED,  
THROUGH SHRI SANGEMESH NIRANI,  
AGE: 32 YEARS, OCC: INDUSTRIALIST,  
THE EXECUTIVE DIRECTOR,  
M/S. NIRANI SUGARS LIMITED,  
R/O. M/S. NIRANI SUGARS LIMITED,  
SY.NO.166, KULLALI CROSS,



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VIJAYA NAGAR, TQ. MUDHOL,  
DIST: BAGALKOT-587313.

2. SHRI MAHESH P. LALAGE,  
AGE: MAJOR, OCC: SERVICE,  
DEPUTY GENERAL MANAGER (ACCOUNTS),  
M/S. NIRANI SUGARS LIMITED,  
R/O. M/S NIRANI SUGARS LIMITED,  
SY.NO.166, KULLALI CROSS,  
VIJAYA NAGAR, TQ: MUDHOL,  
DIST: BAGALKOT-587313,  
PRESENTLY REPRESENTED BY  
SHIVANAND YARGATTI.

...APPELLANTS

(BY SRI. SANGRAM S. KULKARNI, ADVOCATE)

**AND:**

THE PARTNER,  
SPACO CORPORATION THROUGH  
ITS SHRI N. N. GURAV,  
AGE: 66 YEARS,  
OCC: INDUSTRIALIST,  
R/O. B-7/22-23, MIDC MIRAJ,  
DIST: SANGLI-416410,  
MAHARASHTRA STATE.

...RESPONDENT

(BY SRI. NANDKUMAR ANNA VHATKAR, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 AND 2 OF CPC., PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 11/01/2019 PASSED IN O.S.NO.08/2013 PASSED BY THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MUDHOL, BY ALLOWING THE PRESENT APPEAL IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.



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**IN R.F.A. NO.100180 OF 2019**  
**BETWEEN:**

VIJAY SOUHARD CREDIT SAHAKARI LTD.,  
MUDHOL, REPRESENTED BY ITS  
GENERAL MANAGER,  
SHRI GURURAJ MADHAV VAIDYA,  
AGE: 70 YEARS, OCC: MANAGER,  
VIJAY SOUHARD CREDIT LTD.,  
MUDHOL, TQ: MUDHOL,  
DIST: BAGALKOT-587313.

...APPELLANT

(BY SRI SANGRAM S. KULKARNI, ADVOCATE)

**AND:**

M/S. SPACO CORPORATION,  
REPRESENTED BY ITS OFFICER-IN-CHARGE  
B-7/22-23, MIDC MIRAJ, DIST: SANGLI,  
MAHARASHTRA STATE-416410.

...RESPONDENT

(BY SRI NANDKUMAR ANNA VHATKAR, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 READ WITH ORDER 41 RULE 1 AND 2 OF CPC., PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 11/01/2019 PASSED IN O.S.NO.103/2012 PASSED BY THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MUDHOL, BY ALLOWING THE PRESENT APPEAL IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

THESE APPEALS, HAVING BEEN HEARD AND RESERVED ON 29.10.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE R.DEVDAS  
AND  
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI



### **CAV COMMON JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

1. These appeals arise from the judgments and decrees dated 11.01.2019 passed in O.S. Nos.8/2013, 13/2013 and 103/2012, by learned Additional Senior Civil Judge and JMFC, Mudhol (briefly 'the trial court' hereinafter).

2. The dispute involved in O.S. Nos.8/2013 and 13/2013 is between same parties and arise out of same set of facts. The matter involved in O.S. No.103/2012 is ancillary to the dispute involved in other two suits. As such, for the sake of convenience all these appeals are taken up for consideration together.

3. Relevant facts of these suits, briefly noted hereunder:

3.1 Undisputed/Admitted facts:

a) Spaco Corporation is a partnership firm (referred as 'the plaintiff' hereinafter), is the manufacturer and the supplier of useful machineries for sugar factories.



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b) Nirani Sugars Limited is a company registered under Companies Act (referred as 'the defendant' hereinafter), has got a sugar manufacturing unit in Kullali Village of Mudhol taluk.

c) Vijay Souhard Credit Sahakari Ltd., Mudhol (referred as 'the bank' hereinafter) is a co-operative bank registered under Karnataka Souharda Sahakari Act, 1997, which is carrying on all banking activities including transfer of funds by RTGS through its account with Axis Bank, Jamakhandi.

d) The defendant required sugar bag handling and ash handling system at their unit. As such, they obtained quotation from the plaintiff and then issued a Letter of Intent dated 22.07.2010 to the plaintiff for manufacturing, supply, erection and commissioning of sugar bag handling system and ash handling at their unit. Afterwards, on 08.09.2010 the defendant placed a Purchase Order with the plaintiff for supply of the sugar bag handling system sizes 650 MM, width capacity 752 to 800 bags, worth Rs.95,00,000/-, to be executed in two phases of Rs.75,00,000/- and Rs.20,00,000/- respectively, subject to certain commercial terms and conditions.



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e) Meanwhile, the defendant placed one more Purchase Order dated 23.08.2011 with the plaintiff for ash handling system for 90 TPH Boiler including supply of required materials for modifications of existing belt conveyors, drive assembly, platform and replacement of hood cover for existing belt conveyor, at the cost of Rs.57,00,000/- and subject to commercial terms and conditions.

3.2 Contentions of the Plaintiff – M/s Spaco Corporation (as per plaint averments in O.S. No.8/2013):

a) The plaintiff has carried out entire work of I Phase of Bag Handling System upto Godown No.3 and Ash Handling System;

b) Work of II Phase of Bag Handling was also started. However, the defendant has not released even 30% advance payment;

c) The plaintiff has supplied the materials worth Rs.2,02,49,633/- to the defendant from 01.04.2010 to 10.09.2011 as per demand of the defendant;



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d) The defendant has paid only a sum of Rs.1,72,92,081/- and the last amount received from the defendant was on 12.4.2012 by RTGS. The defendant was still due a sum of Rs.29,57,552/- to the plaintiff as on 12.04.2012;

e) On 9.1.2013 the plaintiff maintained the suit for recovery of Rs.29,57,552/- from the defendant together with interest at the rate of 18% p.a., from 12.4.2012 till realization of entire money.

3.3 The contention of the defendant – Nirani Sugars Limited (as per the plaint averments in O.S. No.13/2013):

- a) The delivery of Phase-I was within 8 weeks and of Phase-II was within January, 2011;
- b) The plaintiff did not complete the work of the sugar bag handling system properly. Therefore, a meeting was held between the parties on 26.11.2011 regarding the balance work and after discussions, the minutes of the meeting were reduced into writing, enlisting 9 items of work to be completed by the plaintiff;



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- c) The plaintiff agreed to supply all the materials before the end of November, 2011, to complete the balance work on or before 15.12.2011 and to complete ash handling conveyor work within 5.12.2011;
- d) Regarding new ash handling system, a meeting was held between the parties on 25.12.2011 and a memorandum of minutes was prepared enlisting 7 items of work to be attended by the plaintiff;
- e) The plaintiff did not execute and complete the work as agreed upon in the memorandum of minutes and the meetings held between them;
- f) Therefore, on 21.5.2012 the defendant issued a fresh work order to Newcon Engineers of Narayanapura, Dharwad and got balance work done, which was not done by the plaintiff as agreed, to the extent of Rs.16 Lakhs;
- g) The defendant paid more than Rs.1,01,16,750/- for the work of sugar bag handling system and Rs.36,34,600/- for ash handling system and it was an additional liability on the defendant;



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- h) The work was to be done by the plaintiff as against the payment received by them;
- i) The time was essence of the contract;
- j) The plaintiff did not provide good materials as per the specification, the quality and performance of the work was also not good. The defendant had to make alternative arrangement;
- k) The plaintiff is liable to pay the amount spent by the defendant to complete the work and the loss and damages suffered on account of breach of contract committed by the plaintiff. Hence, the defendant maintained the suit against the plaintiff for recovery of Rs.1,37,51,350/- together with court cost and interest.

3.4 The contention of the bank - Vijay Souhard Credit Sahakari Limited, Mudhol (as per the plaint averments in O.S. No.103/2012):

- a) On 12.4.2012 by oversight, the bank transferred a sum of Rs.24,40,461/- to the bank account of the plaintiff by RTGS;



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b) The said mistake came to light on the same day and it was informed to the plaintiff over phone explaining the details of RTGS wrongly sent and requested to refund the amount;

c) The plaintiff did not oblige to the request of the bank. Hence, they maintained the suit for recovery of Rs.24,40,461/- from the plaintiff together with court cost and interest.

4 Based on the pleadings of the parties, the trial court has framed the following issues:

*In O.S. No.8/2013:*

- 1. Whether plaintiff proves that, they have supplied the materials of an amount of Rs.2,02,49,633/- to the defendant from 01-04-2010 to 10-09-2011 and defendant have paid Rs.1,72,92,081/- to them?*
- 2. Whether plaintiff proves that, they have carried out entire work of 1st Phase and started work of 2nd Phase?*
- 3. Whether plaintiff proves that the defendants are in due of Rs.29,57,552/- to their company?*
- 4. Whether plaintiff is entitled for the reliefs sought for?*
- 5. What order or decree?*

*In O.S. No.13/2013:*

- 1. Whether plaintiff proves that, the defendant was failed to perform his part of contract well within the time?*



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2. *Whether plaintiff proves that, due to non performance of contract on the part of defendant they have got done the remaining work through Newcon Engineers, Dharwad by spending an amount of Rs.1,37,51,350/-?*
3. *Whether plaintiff is entitled for the reliefs sought for?*
4. *What order or decree?*

*In O.S. No.103/2012:*

1. *Whether plaintiff proves that, they have received a request to Sri.M.G.Langoti for remitting an amount of Rs.24,40,461/- in his bank account in Syndicate Bank Kittur through RTGS?*
2. *Whether the plaintiff further proves that, while editing the RTGS format in the computer by oversight only amount portion was edited and other details were pertaining to the defendant company?*
3. *Whether defendant proves that this court is not having jurisdiction to entertain this suit as per the provisions of Sec 17 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Amendment Act 2004?*
4. *Whether defendant proves that, suit is bad for non-joinder of necessary party?*
5. *Whether plaintiff bank is entitled for the relief sought for?*
6. *What order or decree?*

5       The parties to the suit have seriously contested all the three suits. All these suits were tried before one court i.e, the learned Additional Senior Civil Judge and JMFC, Mudhol. The



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trial court disposed of these suits by rendering separate judgments, which were pronounced on the same date. The trial court decreed the suit in O.S. No.8/2013 and dismissed other two suits.

6 Sri Sangram S Kulkarni, learned counsel for defendant-Nirani Sugars Limited submitted that the trial Court has failed to properly appreciate oral and documentary evidence available on record in the light of the pleadings of the parties and thereby grossly erred in dismissing their suit and decreeing the suit of Spaco Corporation. He has drawn the attention of this Court to the finding recorded by the trial Court in OS.No.13/2013 that due to non- completion of civil work by the defendant, the plaintiff could not complete their work and despite proceeded to hold that the plaintiff has completed all the works entrusted to them. He further submitted that the trial court has drawn adverse inference against them based on release/payment of certain amount to the plaintiff, which was paid as per the commercial terms and conditions in purchase orders. He submitted that the trial court has not properly considered the contents of minutes of meeting produced at Ex.P9 and proceeded



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to hold that they have placed purchase order with Newcon Engineers without intimating the plaintiff in that regard. In view of the same, he contended that the impugned judgments and decrees passed in these suits are liable to be set aside and the suit in O.S.No.13/2013 is to be decreed as prayed for.

7        Sri Nandakumar Anna Vhatkar, learned Counsel for the plaintiff has supported the findings recorded by trial Court as well as the conclusion arrived at by the said court on the ground that the plaintiff has adduced ample evidence before the trial Court to prove their case. He submitted that the defendant has not adduced any acceptable evidence before trial Court either to show that the plaintiff has not completed the work entrusted to them or to show any deficiency in the work carried out by the plaintiff. He further submitted that the defendant has admitted the plaintiff having supplied the materials as per the purchase orders and the plaintiff could not complete the work because of non-completion of civil work by the defendant. In the said circumstances, he contended that the impugned judgments and decrees do not need any interference at the hands of this Court.



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8 On behalf of the bank, learned counsel Sri Sangram S Kulkarni submitted that the trial court has failed to understand the contention put forth by the plaintiff, who set up a claim of adjustment against the amount, which was wrongly credited to their account by the bank and submitted that the trial court has grossly erred in not taking into account separate entity of the bank and the defendant as well as absence of any communication from the defendant to the bank to make such payment on their behalf. In view of the same, he contended that the trial Court ought to have decreed their suit in O.S.No.103/2012 as prayed for.

9 On hearing the parties to the proceedings and considering the materials on record, the following points would arise for the consideration this Court:

- 1. Whether the trial court is justified in holding that Spaco Corporation has proved that they have completed entire work entrusted to them and Nirani Sugars Limited was due a sum of Rs.29,57,552/- to them as on the date of the suit?*
- 2. Whether the trial court is justified in holding that Nirani Sugars Limited has failed to prove, having incurred an additional liability of Rs.1,37,51,350/-*



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*on account of non completion of the work entrusted to Spaco Corporation?*

*3. Whether the trial court is justified in holding that the transfer of Rs.24,40,461/- by Vijay Souhard Credit Sahakari Limited to the account of Spaco Corporation was at the instance of Nirani Sugars Limited and towards their out-standing dues?*

*4. What Order?*

10 On examining the case papers, it becomes evident that the dispute involved in these suits primarily concerns the plaintiff and the defendant regarding the completion or otherwise of the work entrusted by the defendant to the plaintiff, pursuant to the purchase orders dated 08.09.2010 and 23.08.2011. The materials on record indicate that referring to the pleadings of both the plaintiff and the defendant would aid in understanding their respective contentions and help minimize the scope of the dispute.

11 The averments of the plaint in O.S.No.8/2013 and the written statement filed in O.S.No.13/2013 go to show that the sum and substance of the contention of the plaintiff is as under:



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- a) As per Purchase Order dated 22.07.2010, the plaintiff was required to supply the materials within a period of 8 weeks i.e. by 22.09.2010. Nonetheless, the plaintiff has dispatched the materials to the defendant on 01.09.2010 itself as per the letter of intent.
- b) The defendant did not pay 30% advance amount as per commercial terms and conditions mentioned in letter of intent. Therefore, the plaintiff did not supply goods of phase II.
- c) The defendant issued final Purchase Order on 08.09.2010 i.e. after the material of Phase I was already supplied to them.
- d) Though the plaintiff supplied the materials on 01.09.2010, it was lying idle on site of the defendant for about one year due to non-completion of civil construction work of sugar go-down of the defendant and thereby the plaintiff has suffered severe loss.
- e) The plaintiff has completed all the work in time. However, installation was depending on completion of civil work on the part of the defendant.



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- f) The plaintiff has completed Phase I work immediately after completion of civil job by the defendant.
- g) The plaintiff could not start Phase II work due to non receipt of advance amount.
- h) Insofar as ash handling system after issuance of letter of intent dated 23.07.2011 the plaintiff dispatched the materials on 10.08.2011.
- i) The defendant issued final Purchase Order on 23.08.2011 i.e., after the materials were already supplied to them.
- j) The plaintiff has supplied the materials worth Rs.2,02,49,633/- to the defendant from 01.04.2010 to 10.09.2011.
- k) The defendant has paid only a sum of Rs.1,72,92,081/- till 12.04.2012.
- l) The defendant is still due a sum of Rs.29,57,552/-.

12 Per Contra, the contention of the defendant as per the averments of the plaint in O.S. No.13/2013 and the written statement in O.S. No.8/2013 is as follows:



- a) As per the terms of order the plaintiff was required to deliver Phase-I without eight weeks and Phase-II within January-2011.
- b) The plaintiff did not complete the work of sugar bag handling system properly and as such a meeting was held on 26.11.2011 in connection with its balance work and minutes of such meeting was reduced into writing.
- c) The plaintiff had assured to complete the balance work as enumerated at Sl.Nos.1 to 9 in the minutes of the meeting within the specifications and stipulations made therein.
- d) Regarding new ash handling system, a meeting was held on 25.12.2011 and a memorandum of minutes was recorded on the same date.
- e) The plaintiff had assured to complete the pending work as enumerated at Sl.Nos.1 to 7 of the minutes of the meeting.
- f) In spite of assurance given in such meetings the plaintiff did not execute and complete the work as agreed upon.



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- g) In the above circumstances, on 21.05.2012 the defendant issued a fresh work order to Newcon Engineers for designing, fabrication, modifications, alterations, erection and commissioning of existing sugar bag assembling, etc.
- h) The defendant got the balance work done through Newcone Engineers, which was not done by the plaintiff as agreed upon, to an extent of Rs.16,00,000/-.
- i) As the plaintiff did not perform their part of contract, the defendant had to pay more than Rs.1,01,16,750/- for the work of sugar bag handling system and Rs.36,34,600/- for ash handling system.
- j) The plaintiff did not execute the work as against the payments received by them and as such the defendant incurred additional liability of more than Rs.1,37,51,350/.
- k) As per the terms of the contract between the plaintiff and the defendant, the time was essence of the contract.



l) The plaintiff has not provided good materials as per the specifications. The quality and the performance of the work by the plaintiff was also not good.

m) The defendant incurred heavy expenditure for making alternative arrangement and compelled to get the work done through some other agency.

n) The plaintiff was liable to indemnify the defendant for the loss and damage caused on account of breach of contract committed by them.

13 The pleadings of the plaintiff, as narrated above, make it clear that even according to the plaintiff, they had not commenced the work of Phase-II due to non-receipt of the advance amount. Further, they have contended that the materials supplied by them on 01.09.2010 remained idle at the defendant's site for over a year owing to the alleged non-completion of the civil construction work of the defendant's sugar go-downs. Thus, it becomes evident that the plaintiff's claim of having completed all their work on time is not correct.



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**14** In addition to the above, the defendant has specifically averred in their pleadings that two meetings were held between the representatives of the plaintiff and the defendant on 26.11.2011 and 25.12.2011 regarding the non-completion of the work entrusted to the plaintiff. In support of this contention, the defendant has produced the minutes of these meetings before the Court. The plaintiff has not seriously disputed the genuineness of these documents; instead, they have merely contended that Sri N. N. Gurav, a partner of the plaintiff firm, was not present at those meetings.

15 Admittedly, the documents in question bear the signatures of the representatives of both parties. In these documents, the plaintiff was represented by Sri Belgar and Sri Umare. The contents of the documents indicate that after discussions between the representatives of both sides, the balance work to be attended to by the plaintiff was recorded, along with an assurance from the plaintiff's side to complete the said work within the time specified therein. It is not the case of the plaintiff that they have completed the work as agreed upon in the meetings held on 26.11.2011 and 25.12.2011. In view of



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the same, it should be held that the plaintiff has utterly failed to establish their contention of having executed the entire work entrusted to them by the defendant.

16 It is the definite case of the plaintiff that pursuant to the purchase orders, they have supplied the materials worth ₹2,02,49,633/- to the defendant between 01.04.2010 and 10.09.2011. In support of this contention, the plaintiff has produced several documents including extracts of ledger accounts, invoices, bills, delivery challans, gate pass receipts, and copies of letters addressed to the defendant. To start with, the total value of the purchase orders placed with the plaintiff is only ₹1,52,00,000/- (i.e., ₹95,00,000/- plus ₹57,00,000/-). In contrast, the plaintiff claims to have supplied materials worth ₹2,02,49,633/-, which far exceeds the total value of the purchase orders. Further, it is the case of the plaintiff that the materials relating to the suit transactions were dispatched to the defendant for the first time on 01.09.2010. Whereas, the statement of accounts produced by the plaintiff commences with an entry showing an opening balance as on 01.04.2010 and reflects transactions between 01.04.2010 and 18.08.2010.



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Added to above, a majority of the documents placed on record by the plaintiff pertain to the year 2009. Thereby, it is evident that the plaintiff has failed to substantiate their claim.

17 According to the plaintiff, the defendant had paid a total sum of Rs. 1,72,92,081/- to them up to 12.04.2012. The defendant has not disputed this assertion of the plaintiff except with regard to the alleged last payment made on 12.04.2012 through RTGS. The defendant has also admitted having received certain materials supplied by the plaintiff. In these circumstances, it was incumbent upon the plaintiff to adduce sufficient evidence to establish the actual quantity of materials supplied to the defendant, their corresponding value, and the payments received, in order to substantiate the alleged balance dues. However, the materials on record reveal that the plaintiff has failed to discharge the initial burden cast upon them in this regard.

18 Coming to the contention of the plaintiff regarding the receipt of Rs. 24,40,461/- from the defendant towards the alleged dues by way of RTGS, the defendant has out-rightly denied having transferred any such amount to the plaintiff.



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Further, the bank has stated that the said amount was credited to the plaintiff's account by mistake and constituted a wrong credit. In the suit filed by the bank for recovery of the said amount, the plaintiff has taken the stand that the credit was not erroneous but a valid transfer made under the instructions of the defendant. However, during cross-examination, Sri N. N. Gurav, the partner of the plaintiff firm, categorically admitted that there was no communication from the defendant indicating the transfer of Rs. 24,40,461/- towards their dues. Hence, it becomes evident that the transfer of Rs. 24,40,461/- to the plaintiff's bank account was nothing but a wrong credit given by the bank through oversight.

19 The plaintiff has sought to justify the above contention on the ground that although the amount in question was transferred to their account on 12.04.2012 through RTGS, there was no communication from the bank regarding any alleged wrong credit for a considerable period and that the bank has failed to adduce sufficient evidence to establish that the transfer was made by mistake. However, the materials on



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record clearly indicate that this contention of the plaintiff is palpably false.

20 It is because admittedly the plaintiff has written a letter on 18.4.2012 to the Executive Director of the defendant on 18.04.2012 and has sent a copy of the said letter to the bank. The said letter has been produced before the Court by the bank as Ex.P8 in O.S.No.103/2012. It reads as follows :

"Kind attention Mr. Sangamesh Nirani

Dear Sirs,

We acknowledge with thanks the receipt of an amount of Rs.24,40,461-00 (Rupees Twenty Four lakhs Forty Thousand Four hundred Sixty One only) from Vijay Souhard Credit Sahakari Limited towards our outstanding payment.

We have credited the said amount to your account with us and we are kindly requested to please credit the said amount to M/s. Vijay Souhard Credit Sahakari Limited (emphasis supplied) and obliged.

Thanking you,

Yours Faithfully,  
For Spaco Corporation  
Sd/-  
(N.N.Gurav)  
Authorised Signatory"

21 The highlighted portion of the letter indicates an implied admission on the part of the plaintiff that as on 18.04.2012, they were aware of the wrong credit made to their



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account by the bank, as well as of the bank's request to refund the said amount. Otherwise, there would have been no occasion for the plaintiff to request the defendant to credit the amount to the bank. Moreover, if the plaintiff had in fact received Rs. 24,40,461/- through a valid transfer made at the defendant's instructions, there would have been no necessity for them to address a letter to the defendant requesting that the said amount be credited to the bank. Thus, the materials on record clearly indicate an implied admission on the part of the plaintiff of having received the said amount as a result of a wrong credit. Despite such knowledge, the plaintiff not only failed to refund the amount to the bank but also unlawfully retained it by advancing untenable contentions. Consequently, it is held that the bank has established its entitlement to recover a sum of Rs. 24,40,461/- from the plaintiff along with interest thereon at the rate of 18% per annum from 12.04.2012 till realization, as prayed for in the suit.

22 Coming to the suit filed by the defendant in O.S.No.13/2013, they have sought for recovery of Rs.1,37,51,350/- from the plaintiff together with court cost and



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interest on the ground that the failure on the part of the plaintiff to complete the work within stipulated time and failure to provide good materials as per the specification, caused heavy loss to them. The defendant has quantified their loss under following heads:

“ Part-I (Ash Handling)

|    |                                                                                                                                                                                                                                                                                              |                |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| a. | There was a loss of 50 hours for which the unit was stopped for non-performance of work entrusted to the defendant in ash handling. Export is 14,000/- units per hours and for 50 hours it is 7 lakhs units and ppa rate is rs.2.968 per unit. Therefore, the total loss for 7 lakhs unit is | Rs.50,77,600/- |
| 2. | Labour charges borne by plaintiff company for 10 days with average 10 casual labour X 3 shift at the rate of 190 per man per day.                                                                                                                                                            | Rs.57,000/-    |
| 3. | The amount given to Newcon Engineer, as per work order dated 21.05.2012 for items No.3 and 4 of the said work order.                                                                                                                                                                         | Rs.15,00,000/- |
|    | Total                                                                                                                                                                                                                                                                                        | Rs.36,34,600/- |

Part-II (Sugar handling system)

|    |                                                                                                                                                                |                |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 1. | The amount borne by the plaintiff company towards payment to Newcon Engineers as per work order No.87 dated 21.05.2012 item No.3 and 4 of the said work order. | Rs.30,00,000/- |
| 2. | There was a 50 hours stoppage of crushing and due to that there was a loss of approximate bags for 50 hours.                                                   | Rs.70,31,250/- |
| 3. | Payment made to labour for 50 days at the rate of 3 casual labour X 3                                                                                          |                |



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|  |                                                                                         |                  |
|--|-----------------------------------------------------------------------------------------|------------------|
|  | shift at the rate of 190 per man for 50 days.                                           | Rs.85,500/-      |
|  | Total                                                                                   | Rs.1,01,16,750/- |
|  | The total amount of Part-I and II mentioned above i.e., Rs.1,01,16,750/-=Rs.36,34,600/- | Rs.1,37,51,350/- |

23 Before proceeding further, it would be beneficial to refer to the legal position relating to the claim of the damages. In **Consolidated Construction Consortium Limited Vs Software Technology Parks of India**, reported in **2025 INSC 574**, the Hon'ble Supreme Court of India while dealing with similar dispute, has explained the legal position as under:

*"18. Section 55 of the Indian Contract Act says that when a party to a contract promises to do a certain thing within a specified time but fails to do so, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract. If time is not the essence of the contract, the contract does not become voidable by the failure to do such thing on or before the specified time but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure. Further, if in case of a contract voidable on account of the promisor's failure to perform his promise within the time agreed and the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.*



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*19. Sections 73 and 74 deal with consequences of breach of contract. Heading of Section 73 is compensation for loss or damage caused by breach of contract. When a contract is broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it. On the other hand, Section 74 deals with compensation for breach of contract where penalty is stipulated for. When a contract is broken, if a sum is mentioned in the contract as the amount to be paid in case of such breach or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled whether or not actually damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or the penalty stipulated for.*

*20. A conjoint reading of Sections 55, 73 and 74 would indicate that in a contract whether time is of the essence or not, if the contractor fails to execute the contract within the specified time, the contract becomes voidable at the option of the promisee and the promisee would be entitled to compensation from the promisor for any loss occasioned to him by such failure. However, in case of a contract where time is of the essence, the contract becomes voidable on account of the contractor's failure to execute the contract within the agreed time. The promisee cannot claim compensation for any loss occasioned by such breach of the contract unless he gives notice to the promisor of his intention to claim compensation. This is made more specific in Section 73. Section 74 contemplates a situation where penalty is provided for and quantified as compensation for breach of contract. In such a case, the party complaining of the breach is entitled to compensation whether or not actual damage or loss is proved to have been caused thereby but such compensation shall not exceed the quantum of penalty stipulated."*



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24 In the present case, there is no dispute between the parties regarding the entrustment of certain works by the defendant to the plaintiff under the purchase orders dated 22.07.2010 and 08.09.2010. However, it is an admitted position that there was no written contract or agreement between them stipulating the terms and conditions governing the consequences of failure to perform their respective obligations. Therefore, the present claim of the defendant is required to be considered in the light of Sections 55 and 73 of the Indian Contract Act.

25 The first and foremost contention of the defendant is that time was the essence of the contract. However, the materials on record do not support this contention. As per the understanding between the parties, the plaintiff was required to complete the installation of the sugar bag handling system within a period of eight weeks from the date of the purchase order. Based on the admissions of the parties, the said work ought to have been completed on or before 22.11.2011. It is not the case of the defendant that upon expiry of the stipulated period, they withdrew the work entrusted to the plaintiff or raised any formal protest. On the contrary, even according to



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the defendant, a joint meeting was convened on 26.11.2011 to discuss the pending work, during which the plaintiff assured completion of the balance work by 05.12.2011. It is significant to note that the minutes of the meeting dated 26.11.2011 contain no reference to the time stipulated for completion being treated as the essence of the contract.

26 It is well settled that when time is of the essence in a contract, the contract becomes voidable if the promisor fails to perform within the stipulated period. In such a case, the promisee cannot claim compensation for any loss caused by the breach unless a notice is given to the promisor expressing the intention to claim such compensation. In the present case, the defendant has not stated anything about having given notice to the plaintiff regarding their intention to claim compensation, either during the discussion held on 26.11.2010 or at any subsequent time.

27 In the aforesaid decision, the Hon'ble Supreme Court of India has held that a conjoint reading of Sections 55, 73, and 74 of the Indian Contract Act indicates that in a contract, whether or not time is of the essence, if the promisor fails to



execute the contract within the stipulated period, the contract becomes voidable at the option of the promisee. In such a situation, the promisee would be entitled to claim compensation from the promisor for any loss sustained by such failure. Accordingly, it becomes necessary for this Court to examine whether the defendant's claim for compensation is directly attributable to the alleged breach of contract.

28 The defendant's claim reveals that compensation has been sought under several heads namely loss of 50 hours of operational time due to stoppage of the unit, for non-performance of the work entrusted to the defendant in ash handling, labour charges incurred by them, the amount paid to Newcon Engineers for completing the work under the work order dated 21.05.2012, and loss on account of 50 hours of stoppage in crushing operations. A prima facie examination of these claims indicates that most of them bear no direct nexus with the alleged non-completion of the work order. Moreover, it is incumbent upon the defendant to place sufficient evidence on record to establish the actual loss, if any, suffered due to the



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plaintiff's alleged non-performance of the contractual obligations.

29 It is the definite case of the defendant that on 21.05.2012, they issued a fresh work order to Newcon Engineers for designing, fabrication, modification, alteration, erection, and commissioning of the existing sugar bag and ash handling systems. A copy of the said work order has been produced before the trial court. It is pertinent to note that the work order dated 21.05.2012 does not make any reference to the work allegedly left unfinished by the plaintiff. Furthermore, in their pleadings, the defendant has not made any mention of having issued a work order for completion of the unfinished work of the plaintiff. This aspect creates an impression that the work entrusted to Newcon Engineers was an independent contract undertaken by the defendant as per their own requirement.

30 In addition to the above, the said work order specifies that the labour charges for design, fabrication, modification, alteration, erection, and commissioning were fixed at Rs.80,00,000/-. However, the defendant has claimed a total amount of Rs.1,37,51,350/- under various heads including



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losses said to have been occasioned due to stoppage of crushing operations and non-utilization of the unit. The defendant examined one of the technicians of Newcon Engineers, Sri Kunal as PW-3 in support of their case. During his deposition, PW-3 merely stated that the defendant had entrusted the work of the sugar bag handling system in 2012, which had been left incomplete by the plaintiff and that Newcon Engineers had completed it. However, PW-3 has not given any definite statement regarding either the total cost of the said work or the actual amount paid by the defendant to Newcon Engineers. Further, neither the defendant nor PW-3 has produced any supporting document before the trial court such as quotations, purchase orders, or other records, to show the actual cost of the work entrusted to Newcon Engineers.

31 It is relevant to note that in paragraph 8 of the plaint in O.S. No.13/2013, the defendant specifically averred that the balance work, which was not completed by the plaintiff as agreed, had been executed at a cost of Rs.16,00,000/-. This averment was reiterated by Sri Mahesh, the Deputy General Manager of the defendant, during his evidence. Thus, the



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materials on record probabilise that the defendant incurred only a sum of Rs.16,00,000/- towards completing the work left unfinished by the plaintiff to make the facility operational.

32 The question of awarding compensation would arise only when the promisee establishes that they have sustained a loss due to breach of contract by the promisor. As already pointed out, it appears from the record that the defendant incurred only a sum of Rs.16,00,000/- to complete the work left unfinished by the plaintiff. However, this by itself cannot be construed as a loss suffered by the defendant. This is because the defendant has neither claimed to have made full payment to the plaintiff in advance nor shown that engaging another agency to complete the unfinished work compelled them to incur any additional expenditure. Hence, it must be held that the defendant has not established having spent any additional amount to complete the balance work left unattended by the plaintiff.

33 The defendant has also attempted to contend that the work executed by the plaintiff did not conform to the agreed specifications and quality standards. However, it is not the case



of the defendant that during the meetings held on 26.11.2011 and 25.12.2011, any discussion took place regarding deficiencies in the specifications, quality of materials, or workmanship of the plaintiff. In light of the above, this contention of the defendant cannot be accepted.

34 The defendant has claimed that they are entitled to compensation under Section 74 of the Indian Contract Act. The said provision is attracted only when there exist a written agreement between the parties stipulating a penalty for breach of contract. In the present case, the defendant has not produced or even pleaded the existence of any such contract containing specific terms and conditions regarding penalties for breach. For the foregoing reasons, it is held that the defendant has failed to establish any valid ground to claim compensation from the plaintiff for their failure to complete the entrusted work within the stipulated period. Accordingly, Point Nos.1 and 3 are answered in the negative and Point No.2 in the affirmative.

35 In the result, this Court proceeds to pass the following:



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**ORDER**

- i. The appeals in RFA Nos.100179/2019 and 100180/2019 are allowed with cost throughout.
- ii. The appeal in RFA No.100181/2019 is dismissed.
- iii. The judgment and decree dated 11.01.2019 passed in O.S. No.8/2013 by learned Additional Senior Civil Judge and JMFC, Mudhol is set aside and consequently the said suit, i.e. O.S. No.8/2013, is dismissed.
- iv. The judgment and decree dated 11.01.2019 passed in O.S. No.13/2013 by learned Additional Senior Civil Judge and JMFC, Mudhol, is confirmed.
- v. The judgment and decree dated 11.01.2019 passed in O.S. No.103/2012 by learned Additional Senior Civil Judge and JMFC, Mudhol is set aside and consequently, the said suit, i.e. O.S. No.103/2012, is decreed.



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- vi. The defendant in O.S. No.103/2012 namely Spaco Corporation is directed to pay a sum of Rs.24,40,461/- to the Plaintiff therein namely Vijay Souhard Credit Sahakari Limited together with interest thereon at the rate of 12% per annum from 12.04.2012 till the date of its realization.

**Sd/-**  
**(R.DEVDAS)**  
**JUDGE**

**Sd/-**  
**(B. MURALIDHARA PAI)**  
**JUDGE**